

FBOYSIL1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

S1 15 Cr. 93 VEC

5 SHELDON SILVER,

6 Defendant.

7 -----x

November 24, 2015
9:30 a.m.

9
10 Before:

11 HON. VALERIE E. CAPRONI,

12 District Judge
13 and a jury

14 APPEARANCES

15 PREET BHARARA,
United States Attorney for the
16 Southern District of New York
CARRIE HEATHER COHEN,
17 HOWARD SETH MASTER,
ANDREW DANIEL GOLDSTEIN,
18 JAMES M. McDONALD,
Assistant United States Attorneys

19
20 STROOCK & STROOCK & LAVAN, LLP
Attorneys for defendant Silver

21 BY: JOEL COHEN, Esq.
- and -

22 MOLOLAMKEN, LLP
BY: STEVEN FRANCIS MOLO, Esq.
23 ROBERT KELSEY KRY, Esq.
JUSTIN VAUN SHUR, Esq.
24 JUSTIN M. ELLIS, Esq.
TUONGVY LE, Esq.

25 Of counsel

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(Trial resumed)

(Jury not present)

THE COURT: Good morning. Please be seated.

A couple of housekeeping items.

Does the government have a redacted copy of the indictment? And do you have a copy of the bill of particulars?

MS. COHEN: Your Honor, we have a copy of the bill of particulars. We did not know that the indictment was going to go back to the jury, but we can have that done while the charge is being read.

THE COURT: Thank you. That's fine.

MS. COHEN: Apologies, your Honor.

THE COURT: Second, how do the parties intend to send the exhibits back? Do you have them all loaded into a laptop?

MS. COHEN: We have them all loaded on a hard copy, on a cart, one of them. The two teams are just going to get together in the back and check each cart so there's no issue.

Your Honor, how do you want the indictment redacted?

THE COURT: The only thing I was going to say that should be taken out is the forfeiture count.

I would suggest substituting Developer I and Developer II with Glenwood and Witkoff.

MS. COHEN: And Doctor I with Taub?

THE COURT: Yes. Whatever he was called. Yes.

Do you want to be heard, Mr. Molo?

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1 MR. MOLO: I just want to talk to the government in
2 terms of the exhibits.

3 Do you have all the defense exhibits?

4 MS. COHEN: We have copies of all of the government
5 exhibits. We have a set of the defense exhibits, but I had
6 spoken to Mr. Shur, and I had understood that you all were
7 going to have hard copies of all the defense exhibits, but we
8 can put that together.

9 MR. MOLO: I just want to make sure.

10 MS. COHEN: We have a list of all of the defense
11 exhibits. We have a lot of them loaded. We can certainly
12 facilitate that.

13 MR. MOLO: I certainly don't believe it should delay
14 your reading the charge.

15 THE COURT: Correct. They have other things to do
16 before they start digging into exhibits.

17 MR. MOLO: Exactly.

18 THE COURT: Anything further before I bring the jury
19 out?

20 MR. COHEN: Yes. If we can approach, your Honor.

21 THE COURT: Okay.

22 (Continued on next page)

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(At the side bar)

MR. COHEN: Your Honor, we have an obligation to disclose that this morning, Mr. Hamilton --

MR. MOLO: By the way, this is on the record.

MR. COHEN: We're going to ask that it be sealed and Your Honor will decide later what you want to do with it.

Mr. Hamilton works for Mr. Molo and previously clerked in the Third Circuit. He picks up Mr. Silver in the morning to avoid the press.

As they were walking past that outdoor food vendor thing, there were two NBC trucks there. He observed a Caucasian juror from the jury from the front row. I don't remember what number he is, a tall guy.

He had a newspaper under his arms talking to one of the NBC truck personnel. I don't know what it means. I'm bringing it to your attention because we think we have an obligation to bring it to your attention and to do anything that's appropriate.

THE COURT: What do the parties propose?

MS. COHEN: I think it might be an alternate juror.

THE COURT: No. The large guy in the front row. He's now juror number 2.

MS. COHEN: I think your Honor should inquire --

MR. COHEN: Individually.

MS. COHEN: -- individually. If he's read the paper

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1 and if he's had contact with the news.

2 MR. COHEN: We're also okay with that. Like I said --

3 MR. MOLO: The papers have been following these
4 sidebars.

5 THE COURT: I'm sorry. Frankly, there was nothing
6 sensitive about the sidebar I don't think.

7 MR. COHEN: Does it make sense, your Honor, for you to
8 inquire of him in chambers?

9 THE COURT: Why? Tell me what you're concerned about.
10 This seems like kind of a standard Mr. Juror number 3, did you
11 have any contact with the NBC News truck this morning?

12 MR. COHEN: My only concern is whether it might have
13 been in view of the other jurors.

14 THE COURT: The other juror wouldn't know.

15 MS. COHEN: When you talk to him, you may find out.
16 When you ask him and if he says he has read the press, then you
17 would have to ask him if he has talked to other jurors about
18 it. That makes sense.

19 THE COURT: The fact that he's got a newspaper is not
20 in and of itself of any concern. I'm happy that he's reading
21 the newspaper. I'm happy that anybody is reading the newspaper
22 so that we still have a newspapers 20 years from now.

23 MR. COHEN: As long as he's not reading the press
24 about the trial.

25 THE COURT: So the real question is whether I should

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1 do this in open court or in my robing room.

2 Does the government have a view on that?

3 MS. COHEN: I am fine if you do it in your robing
4 room.

5 MR. COHEN: That would be my preference.

6 THE COURT: My robing room is quite small.

7 MR. COHEN: I don't have any problem with your Honor
8 doing it alone without counsel.

9 MS. COHEN: I think actually it's easier if counsel is
10 there so we can hear what the answer is and the judge doesn't
11 have to report back to us and go back-and-forth. Unless you
12 think for the juror it's better to do it alone, that's fine.

13 THE COURT: Do you waive your client's presence?

14 MR. COHEN: Yes.

15 THE COURT: We'll deal with this in the robing room
16 real quick, and then we'll start.

17 MR. COHEN: What's your decision? With counsel or
18 without counsel?

19 THE COURT: With counsel.

20 (Continued on next page)

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(In open court)

THE COURT: For the record, we're taking a matter in the robing room that involves a potential issue with one of the jurors.

(Continued on next page)

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1 (In robing room)

2 (Juror present)

3 THE COURT: Hi. Come on in and have a seat.

4 This morning, did you have any contact with the guys
5 from the NBC TV crew?

6 JUROR: Yes.

7 THE COURT: Do you know them?

8 JUROR: I know the one girl from the news.

9 THE COURT: So you just said hello?

10 JUROR: That's all I did was say hello. I watch every
11 morning from 4:30 to 7:00.

12 She said really? My family doesn't even watch me on
13 TV.

14 THE COURT: That was the extent of your conversation?

15 JUROR: Yes.

16 THE COURT: You didn't talk about the case at all?

17 JUROR: No.

18 THE COURT: Have you read anything about the case?

19 JUROR: No. Katie. They call her Kat. I watch her
20 every day.

21 THE COURT: All right. Thank you.

22 JUROR: Okay.

23 Don't discuss this with the other jurors, please.

24 (Juror not present)

25 THE COURT: Okay?

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1 MS. COHEN: You have no objection?

2 MR. COHEN: No objections.

3 THE COURT: Perfect.

4 MS. COHEN: The government has no objections.

5 (Continued on next page)

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1 (In open court)

2 THE COURT: Anything further before I bring out the
3 jury?

4 MS. COHEN: Not from the government, Your Honor.

5 MR. MOLO: No, your Honor.

6 (Continued on next page)

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Charge

1 (In open court)

2 THE COURT: Good morning, everybody.

3 What you've got on your seat is the charge that I'm
4 about to read to you. If you will flip to page 3.

5 Okay. Members of the jury, you have heard all of the
6 evidence. I'm now going to instruct you on the law that
7 governs the case. There are three parts to these instructions.

8 First, I will provide you with some general
9 instructions about your role and about how you are to decide
10 the facts of the case. These instructions would apply to just
11 about any trial.

12 Second, I will give you specific instructions about
13 the legal rules applicable to this particular case. Third, I
14 will give you instructions on the general rules governing your
15 deliberations.

16 I will read most of this. It's not my favorite way to
17 communicate with a jury. But, because there is a need for
18 precision, it's important that I get the words just right. So
19 that's why I will be reading.

20 I have provided you each with a copy of the charge.
21 If it's easier to listen and understand while you are reading
22 along, please do so. If you would prefer, you can just listen.

23 Either way, you will have a copy of the charge with
24 you in the jury room so that you can consult it if you want to
25 reread any portion to facilitate your deliberations. You will

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1 also have in the jury room a verdict form on which to record
2 your verdict.

3 It is my duty to instruct you on the law, just as it
4 has been my duty to preside over the trial and decide what
5 testimony and evidence is relevant for your consideration.

6 It is your duty to accept my instructions on the law
7 and to apply them to the facts as you determine them. On legal
8 matters, you must take the law as I give it to you. You may
9 not substitute your own notions or opinions of what the law is
10 or ought to be.

11 You should not be concerned about the wisdom of any
12 rule that I state. Regardless of any opinion that you may have
13 as to what the law may be or should be, it would violate your
14 sworn duty to base the verdict upon any view of the law other
15 than that which I give you.

16 If an attorney has stated a legal principle different
17 from what I tell you, you must follow my instructions. You
18 should not single out any particular instruction as alone
19 stating the law.

20 You should consider my instructions as a whole as you
21 deliberate. You should not infer from anything I have said or
22 done during this trial that I have any view on the credibility
23 of the witnesses or any view about how you should decide the
24 case.

25 I have no opinion as to the facts or the verdict that

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Charge

1 you should render in this case.

2 You are the sole and exclusive judges of the facts.
3 You determine the credibility of the witnesses. You resolve
4 any conflicts that might exist in the evidence.

5 You draw whatever reasonable inferences you decide to
6 draw from the facts as you have determined them, and you
7 determine the weight of the various pieces of evidence.

8 You must base your discussions and decisions solely on
9 the evidence presented to you during trial and that evidence
10 alone. You may not consider or speculate on matters not in
11 evidence or matters outside the case.

12 As I told you at the outset of the case, it is the
13 duty of the attorneys to object when the other side offers
14 testimony or evidence that the attorney believes is not
15 properly admissible.

16 Therefore, you should draw no inference if an attorney
17 objected to evidence. Nor should you draw any evidence from
18 the fact that I might have sustained or overruled an objection.

19 You are required to evaluate the evidence calmly and
20 objectively, and you must be completely fair and impartial.
21 Your verdict must be based solely on the evidence introduced at
22 this trial or the lack of evidence.

23 The parties in this case are entitled to a trial free
24 from prejudice or bias for or against either side.

25 Our judicial system only works if you reach a verdict

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1 through a completely fair and impartial consideration of the
2 evidence. In deciding the facts of the case, it would be
3 improper for you to consider any personal feelings you may have
4 about any party or any witness or any other such irrelevant
5 factor.

6 This case must be decided by you as an action between
7 parties of equal standing in the community and of equal worth.
8 All parties are entitled to the same fair trial. All parties
9 stand equal before the law and are to be dealt with as equals
10 in this court.

11 The defendant here, Sheldon Silver, is charged with
12 several federal crimes about which I will instruct you shortly.
13 Please bear in mind, however, that a charge is not itself
14 evidence of anything and that Mr. Silver is presumed innocent.

15 The defendant has pleaded not guilty. To prevail
16 against the defendant on a given charge, the government must
17 prove each essential element of that charge beyond a reasonable
18 doubt.

19 If the government succeeds in meeting its burden, your
20 verdict must be guilty on that charge. If it fails, your
21 verdict must be not guilty on that charge.

22 The burden of proof never shifts to the defendant.
23 The law presumes a defendant to be innocent and, therefore,
24 never imposes upon a defendant in a criminal case the burden or
25 duty of calling any witnesses or producing any evidence.

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1 In other words, as to each charge, Mr. Silver starts
2 with a clean slate and is presumed innocent until such time, if
3 ever, that you as a jury are satisfied that the government has
4 proven that he is guilty of that charge beyond a reasonable
5 doubt.

6 The question then becomes what is a reasonable doubt.
7 The words almost define themselves. It is a doubt based on
8 reason and common sense. It is a doubt that a reasonable
9 person has after carefully weighing all the evidence. It is a
10 doubt that would cause a reasonable person to hesitate to act
11 in a matter of importance in his or her life.

12 Proof beyond a reasonable doubt must be, therefore,
13 proof that is so convincing that a reasonable person would not
14 hesitate to rely on it in making an important decision.

15 Proof beyond a reasonable doubt is not, however,
16 beyond all possible doubt. A reasonable doubt is not a doubt
17 based on caprice or whim. Nor is it a doubt based on
18 speculation or suspicion.

19 Reasonable doubt is also not an excuse to avoid the
20 performance of an unpleasant duty. If, after fair and
21 impartial consideration of the evidence, you have a reasonable
22 doubt as to Mr. Silver's guilt with respect to a particular
23 charge against him, then you must find Mr. Silver not guilty of
24 that charge.

25 On the other hand, if, after fair and impartial

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1 consideration of all the evidence, you are satisfied beyond a
2 reasonable doubt of Mr. Silver's guilt with respect to the
3 particular charge against him, you must find Mr. Silver guilty
4 of that charge.

5 I want to take a moment to describe to you what is and
6 is not evidence in this case. As I have said, you may rely
7 only on evidence in your deliberations.

8 The evidence in this case is the sworn testimony of
9 the witnesses, the exhibits, and the stipulations that were
10 received in evidence. Other things are not evidence.

11 A question by a lawyer is not evidence. The witness'
12 answers are evidence, not the questions. Similarly, documents
13 that lawyers provided to witnesses to refresh their
14 recollection are not evidence. Only the witness' answers are
15 evidence.

16 Arguments by lawyers are not evidence. What the
17 attorneys said in their opening statements and in their
18 summations was intended to help you understand the evidence and
19 to reach a verdict.

20 If your recollection of the facts differs from the
21 lawyers' statements, it is your recollection that controls.

22 Statements that I may have made concerning the
23 evidence are not evidence. Testimony that has been stricken or
24 excluded is not evidence, and it may not be considered by you
25 in rendering your verdict.

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1 Anything you may have seen or heard outside the
2 courtroom is not evidence.

3 Now I will discuss what is evidence. Evidence may
4 come in several forms. First, the sworn testimony of
5 witnesses, regardless of who called the witness, is evidence.
6 This is true of the witness' direct and cross-examination.

7 The exhibits that were admitted during trial are
8 evidence.

9 The stipulations that both parties agreed to and read
10 during the trial are evidence. You must accept as true the
11 facts to which the parties stipulated.

12 Some of the stipulations were about what witnesses
13 would have said if they had been called to testify. You must
14 accept as true the fact that those witnesses would have given
15 that testimony, but it is up to you to determine the weight or
16 importance of the testimony.

17 Generally, there are two types of evidence that you
18 may consider in reaching your verdict, direct and
19 circumstantial.

20 Direct evidence is testimony by a witness about
21 something he or she knows by virtue of his or her own senses,
22 something that he or she has done, seen, felt, touched, or
23 heard.

24 For example, if a witness testified that on the day in
25 question she was in her office and she could see that it was

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1 raining all day, that would be direct evidence about the
2 weather that day.

3 Circumstantial evidence is evidence of one fact from
4 which you infer the existence of other facts. For example,
5 assume that a witness testified that his office does not have a
6 window.

7 On the day in question, however, he saw numerous
8 people coming into the office with wet raincoats and carrying
9 dripping umbrellas.

10 That testimony about the wet raincoats and dripping
11 umbrellas is circumstantial evidence that it was raining that
12 day.

13 So, even though you have no direct evidence regarding
14 the weather, you have circumstantial evidence that it was
15 raining that day.

16 With circumstantial evidence, you must be careful to
17 draw reasonable inferences that reflect all of the evidence.

18 For example, if you live in the city and wake up in
19 the morning and you see that the sidewalk is wet but the street
20 is dry, it's not reasonable to infer that it rained last night.
21 Instead, a more reasonable inference is that the building staff
22 has hosed down the sidewalk.

23 That's all there is to circumstantial evidence. You
24 infer on the basis of reason and common sense from one fact.
25 In my first example, dripping raincoats and umbrellas, the

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1 existence or nonexistence of some other fact, in that case,
2 rainy weather.

3 When circumstantial evidence is presented, it is of no
4 less weight than direct evidence.

5 You have had the opportunity to observe the witnesses.
6 You are the sole judges of credibility of each witness and the
7 importance of his or her testimony.

8 Decide what testimony to believe and what not to
9 believe. Consider each witness' demeanor and manner of
10 testifying; the witness' opportunity to see, hear, and know
11 about the events described; the witness' ability to recall and
12 describe those things; and the reasonableness of the testimony
13 in light of the other evidence in the case.

14 Consider whether part of the witness' testimony was
15 contradicted or supported by other testimony by what the
16 witness said or did on a prior occasion or by the testimony of
17 other witnesses or by other evidence.

18 If you find that a witness has willfully testified
19 falsely as to an important matter, you may disregard the
20 witness' entire testimony, or you may accept as much of the
21 testimony as you find to be true and disregard what you find to
22 be false.

23 A witness may have been mistaken or may have lied in
24 part of his or her testimony while having been accurate and
25 truthful in other parts.

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1 You have heard from two cooperating witnesses and one
2 immunized witness. The cooperating witnesses, Dr. Taub and
3 Mr. Meara, have been promised by the government that, in
4 exchange for testifying truthfully and fully, they will not be
5 prosecuted for any crimes that they may have admitted, either
6 here in court or in interviews with the government.

7 This promise was not a formal order of immunity by the
8 Court but was arranged between the witness and the government.
9 The government is permitted to make these kinds of promises and
10 is entitled to call cooperating witnesses.

11 You are instructed that you may convict the defendant
12 on the basis of such a witness' testimony alone if you find
13 that his testimony proves the defendant's guilt beyond a
14 reasonable doubt.

15 The immunized witness, Dara Iryami, testified under a
16 grant of immunity from this Court. As I explained when she
17 testified, Ms. Iryami was ordered to testify notwithstanding
18 her invocation of her Fifth Amendment right not to be required
19 to incriminate herself.

20 Because I ordered her to testify, her testimony cannot
21 be used against her in any criminal case except in a
22 prosecution for perjury, giving a false statement, or otherwise
23 failing to comply with the order to testify.

24 The government is entitled to call as a witness a
25 person who has been granted immunity by order of the Court, and

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1 you may convict the defendant on the basis of such witness'
2 testimony alone if you find that the testimony proves the
3 defendant guilty beyond a reasonable doubt.

4 I've already given you some general considerations on
5 credibility, and I will not repeat them all here. Nor will I
6 repeat all of the arguments made on both sides.

7 Nevertheless, let me say a few things that you might
8 want to consider during your deliberations on the subject of
9 cooperating and immunized witnesses.

10 The testimony of cooperating and immunized witnesses
11 should be examined by you with great care and caution. You
12 should ask yourself whether the witness would benefit more by
13 lying or by telling the truth.

14 If you believe that the witness was motivated by hopes
15 of personal gain, was the motivation one that would cause the
16 witness to lie? Or was it one that would cause the witness to
17 tell the truth? Did this motivation color the witness'
18 testimony?

19 In sum, you should look at all of the evidence and
20 decide what credence and what weight, if any, you give to the
21 testimony of cooperating and immunized witnesses.

22 You have also heard the testimony of a law enforcement
23 witness. The fact that a witness may be employed as a law
24 enforcement official or employee does not mean that her
25 testimony is deserving of more or less consideration or greater

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1 or lesser weight than that of a witness who is not employed by
2 law enforcement.

3 You have heard evidence during the trial that
4 witnesses have discussed the facts of the case and their
5 testimony with the government lawyers before the witnesses
6 appeared in court.

7 Although you may consider that fact when you are
8 evaluating a witness' credibility, there is nothing unusual or
9 improper about a witness meeting with lawyers before testifying
10 so that the witness can be aware of the subjects he will be
11 questioned about, focus on those subjects, and have the
12 opportunity to review relevant exhibits before being questioned
13 about them.

14 Such consultation helps conserve your time and the
15 Court's time. In fact, it would be unusual for a lawyer to
16 call a witness without such consultations.

17 Going back to witnesses generally, you should consider
18 whether a witness had an opportunity to observe the facts he or
19 she testified about. You should also consider whether the
20 witness' recollection of the facts stands up in light of the
21 other evidence in the case.

22 In other words, what you must try to do in deciding
23 credibility is to size up a person just as you would in an
24 important matter in your own life when you are trying to decide
25 if a person is truthful, straightforward, and accurate in his

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1 or her recollections.

2 There are several persons whose names you have heard
3 during the course of the trial that did not testify. I
4 instruct you that each party had an equal opportunity or lack
5 of opportunity to call those witnesses.

6 Therefore, you should not draw any inferences or reach
7 any conclusions as to what such witnesses would have said had
8 they been called. Their absence should not affect your
9 judgment in any way.

10 You should, however, remember my instruction that the
11 law does not impose on a defendant in a criminal case the
12 burden or duty of calling any witnesses or producing any
13 evidence.

14 The parties have presented exhibits in the form of
15 charts and summaries. These exhibits purport to summarize the
16 underlying evidence that was used to prepare them.

17 I decided to admit these charts and summaries in order
18 to save time and avoid unnecessary inconvenience. You should
19 consider these charts and summaries as you would any other
20 evidence.

21 Mr. Silver did not testify in this case. Under our
22 constitution, a defendant has no obligation to testify or to
23 present any evidence because it is the government's burden to
24 prove a defendant's guilt beyond a reasonable doubt.

25 A defendant is never required to prove that he is

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1 innocent. Therefore, you should not attach any significance to
2 the fact that Mr. Silver did not testify.

3 You may not draw any adverse inference against
4 Mr. Silver because he did not testify, and you may not consider
5 it against Mr. Silver in any way during your deliberations.

6 Let's now turn to the specific charges against
7 Mr. Silver. I will at times refer to each count by the number
8 assigned to it in the indictment.

9 You should know that there is no significance to the
10 order of the counts or the specific number of counts charged.

11 Counts One and Two charge that starting in
12 approximately 2000 through approximately January 2015,
13 Mr. Silver committed honest services fraud by engaging in a
14 scheme in which he received fees from the law firm Weitz &
15 Luxenberg for mesothelioma cases, the leads for which were
16 given to Mr. Silver by Dr. Taub in exchange for official acts
17 by Mr. Silver.

18 Count One charges that the scheme was committed
19 through the use of the mails. Count Two charges that the
20 scheme was committed through the use of interstate wire
21 communications.

22 Counts Three and Four charge that starting in
23 approximately 2000 through approximately January 2015,
24 Mr. Silver committed honest services fraud by engaging in a
25 scheme in which he received fees from the law firm Golberg &

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1 Iryami for tax certiorari business which business was given to
2 Golberg & Iryami by Glenwood and Witkoff in exchange for
3 Mr. Silver's official acts.

4 As with Counts One and Two, Count Three charges that
5 the tax certiorari scheme was committed through the use of the
6 mails; whereas, Count Four charges that the scheme was
7 committed through the use of interstate wire communications.

8 Counts Five and Six charge that Mr. Silver committed
9 extortion under color of official right by engaging in the
10 mesothelioma and tax certiorari schemes.

11 Finally, Count Seven charges that Mr. Silver laundered
12 money by transferring more than \$10,000 of criminally derived
13 property into various investments.

14 In a moment, I will instruct you on each of these
15 charges in more detail. You must consider each charge
16 separately and evaluate each on the evidence or lack of
17 evidence that relates to that charge.

18 Although the indictment will be sent into the jury
19 room, the indictment is not evidence. It is merely an
20 accusation, and it cannot be used by you as proof of anything.

21 As I have stated, Counts One and Three of the
22 indictment charge Mr. Silver with honest services mail fraud,
23 and Counts Two and Four charge Mr. Silver with honest services
24 wire fraud.

25 Honest services fraud involves a scheme to defraud the

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1 public of its right to a public official's honest services.
2 Honest services mail and wire fraud are similar but distinct
3 offenses.

4 In order to sustain its burden of proof with respect
5 to the honest services mail fraud counts charged in Counts One
6 and Three, the government must prove four elements beyond a
7 reasonable doubt:

8 First, that there was a scheme to defraud the State of
9 New York and its citizens of their intangible right to
10 Mr. Silver's honest services as an elected legislator and
11 Speaker of the Assembly;

12 Second, that Mr. Silver knowingly and willfully
13 participated in the scheme to defraud with knowledge of its
14 fraudulent nature and with a specific intent to defraud;

15 Third, that the scheme involved the receipt of bribes
16 and kickbacks;

17 And, fourth, that in executing the scheme, Mr. Silver
18 used or caused the use of the mails.

19 In order to sustain its burden of proof with respect
20 to the honest services wire fraud charged in Counts Two and
21 Four, the government must prove the same first three elements
22 as for honest services mail fraud.

23 The fourth element, however is different. As to the
24 wire fraud charges, the government must prove as a fourth
25 element that, in executing the scheme, Mr. Silver used or

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1 caused the use of interstate wire communications.

2 The first element that the government must prove
3 beyond a reasonable doubt is that there was a scheme or
4 artifice to defraud the State of New York and its citizens of
5 their intangible right to Mr. Silver's honest services.

6 A scheme or artifice is simply a plan to accomplish
7 some goal. For ease of reference, I am just going to use the
8 term "scheme."

9 A scheme to defraud is any scheme that makes false
10 representations regarding material facts if the falsity is
11 reasonably calculated to deceive persons of average prudence.

12 A representation is false if it is untrue when made
13 and was known at the time to be untrue by the person making the
14 representation or causing it to be made.

15 A fact is material if the fact is one which would
16 reasonably be expected to be of concern to a reasonable and
17 prudent person in making a decision.

18 Deceitful statements of half-truths or the concealment
19 of material facts may also constitute false representations
20 under the statute.

21 The government must prove that the goal of the scheme
22 was to deprive the State of New York and its citizens of their
23 right to Mr. Silver's honest services.

24 A public official owes a duty of honest and faithful
25 service to the public he serves and to his public employer.

FBOYSIL1

Charge

1 When a public official obtains a corrupt payment in
2 exchange for official actions taken or to be taken, the
3 official has breached his duty of honest service.

4 It is not necessary that the government prove that
5 Mr. Silver realized any gain from the scheme or that the State
6 of New York and its citizens actually suffered any pecuniary
7 loss.

8 It is sufficient for the government to prove that the
9 State of New York and its citizens did not receive the honest
10 and faithful services of Mr. Silver.

11 The second element that the government must prove
12 beyond a reasonable doubt is that Mr. Silver participated in
13 the scheme to defraud knowingly, willfully, and with a specific
14 intent to defraud.

15 This element involves Mr. Silver's state of mind,
16 which is a question of fact for you to determine like any other
17 fact question.

18 "Knowingly" means to act voluntarily and deliberately
19 rather than mistakenly or inadvertently.

20 "Willfully" means to act knowingly and purposely with
21 an intent to do something the law forbids; that is to say, with
22 a bad purpose either to disobey or to disregard the law.

23 "Intent to defraud" means to act knowingly and with
24 the specific intent to deceive for the purpose of depriving
25 another of the intangible right of honest services.

FBOYSIL1

Charge

1 Direct proof of knowledge and fraudulent intent is
2 almost never available. You cannot look into a person's mind
3 to see what his or her state of mind is or was, and it is the
4 rare criminal scheme where the participants write down or state
5 expressly that they are acting with fraudulent intent. Such
6 direct proof of knowledge and intent is not required.

7 In our everyday affairs we are continuously called
8 upon to decide from the actions of others what they intend and
9 what their state of mind is.

10 Experience has taught us that frequently actions speak
11 louder and more clearly than spoken or written words.

12 Therefore, the ultimate facts of knowledge and
13 criminal intent are frequently established by circumstantial
14 evidence based upon what a person does and says, what he does
15 not say and does not do, all the surrounding circumstances, and
16 the rational or logical inferences that may be drawn from them.

17 As I charged previously, circumstantial evidence is of
18 no less value than direct evidence.

19 Because intent to defraud is an element of the crime,
20 it follows that good faith on the part of Mr. Silver is a
21 complete defense to a charge of honest services mail or wire
22 fraud.

23 Mr. Silver has no burden to establish good faith. The
24 burden is on the government to prove fraudulent intent beyond a
25 reasonable doubt.

FBOYSIL1

Charge

1 In this regard, it is not necessary for the government
2 to prove that Mr. Silver was motivated solely by improper
3 considerations. A defendant may be found to have an intent to
4 defraud even if he also has other intent.

5 The government will have satisfied its burden of proof
6 on this element if you find that Mr. Silver had an intent to
7 defraud, even if he also had other proper or neutral intents
8 for his actions.

9 The third element that the government must prove
10 beyond a reasonable doubt is that Mr. Silver received bribes or
11 kickbacks as part of the scheme to defraud.

12 A bribe occurs when a public official corruptly seeks
13 or accepts, directly or indirectly, something of value from
14 another person with the intent to be influenced in the
15 performance of his public duties.

16 A kickback is similar. A kickback occurs when a
17 public official corruptly seeks or accepts, directly or
18 indirectly, something of value from another person with the
19 intent to be influenced in the performance of his public duties
20 and the influenced public act itself provides the source of
21 funds to be kicked back.

22 To satisfy this element, the government must prove
23 that there was a quid pro quo. Quid pro quo is Latin, and it
24 means this for that or these for those.

25 The government must prove that a bribe or kickback was

FBOYSIL1

Charge

1 sought or received by Mr. Silver, directly or indirectly, in
2 exchange for the promise or performance of official action.

3 Official action includes any action taken or to be
4 taken under color of official authority. The government does
5 not have to prove that there was an express or explicit
6 agreement that official actions would be taken or that any
7 particular action would be taken in exchange for the bribe or
8 kickback.

9 The payment and the receipt of a bribe are not
10 interdependent offenses because the intent of the party giving
11 the thing of value may be different from the intent of the
12 party receiving the thing of value.

13 Therefore, the government only has to prove that
14 Mr. Silver, not the bribe giver, understood that as a result of
15 the bribe or kickback, he was expected to exercise official
16 influence or make official decisions for the benefit of the
17 payer and, at the time the bribe or kickback was accepted, he
18 intended to do so as specific opportunities arose.

19 If you find that Mr. Silver understood that the
20 benefits were provided solely to cultivate goodwill or to
21 nurture a relationship with the person or entity who provided
22 the benefit and not in exchange for any official action, then
23 this element will not have been proven.

24 On the other hand, if you find that the government has
25 proven that Mr. Silver accepted payments or things of value

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Charge

1 intending, at least in part, to take official action in return
2 for those payments as the opportunities arose, then this
3 element will have been proven.

4 It does not matter who initiated the quid pro quo or
5 whether Mr. Silver ever actually performed his part of the quid
6 pro quo.

7 If Mr. Silver did perform his part of the quid pro
8 quo, it does not matter whether the actions he took were
9 desirable or beneficial to the public or that his action was
10 only one in an otherwise lawful process.

11 This element can be proven if you find that Mr. Silver
12 would have taken the same action even if no bribe or kickback
13 had been paid.

14 The honest services fraud laws are concerned with the
15 manner in which public officials take actions, not with whether
16 the official's actions are good or bad or beneficial or
17 detrimental to the public.

18 You heard some testimony about campaign contributions
19 that were given to Mr. Silver and to political campaign
20 organizations associated with Mr. Silver.

21 A person, including a company, has a constitutional
22 right to make campaign contributions to political candidates
23 and political organizations.

24 Contributors have the right to make contributions with
25 the hope that the candidate will support legislation or produce

FBOYSIL1

Charge

1 political outcomes that benefit the contributor.

2 Similarly, politicians have the right to receive
3 contributions, including from people or entities, that hope the
4 politicians will enact laws helpful to them.

5 The government does not allege that the campaign
6 contributions made by Glenwood were unlawful. But you can
7 consider its contributions if you find those contributions are
8 relevant to Glenwood's state of mind.

9 For Counts One and Three, the mail fraud counts, the
10 final element that the government must prove beyond a
11 reasonable doubt is the use of the mails to further the scheme
12 to defraud.

13 Use of the mails includes materials sent through the
14 United States Postal Service or through a private or commercial
15 interstate carrier like Federal Express. To satisfy this
16 element, it does not matter if the mail traveled only within
17 one state.

18 For Counts Two and Four, the wire fraud counts, the
19 final element that the government must prove beyond a
20 reasonable doubt is the use of interstate wire communications
21 to further the scheme to defraud.

22 The wire communications, such as a telephone call or
23 an email transmission, must pass between two or more states.

24 The mailing or wire communication need not itself be
25 fraudulent, but the government must prove that the mailing or

FBOYSIL1

Charge

1 wire communication was used in some way to further or advance
2 the scheme to defraud.

3 The government has provided Mr. Silver with bills of
4 particulars specifying particular mailings and wire
5 communications that it alleges satisfy the fourth element of
6 Counts One through Four. The bills of particular will be
7 provided to you in the jury room.

8 As to Counts One and Three, in order to find this
9 element satisfied, you must unanimously agree that at least one
10 specific mailing that is set forth in the bills of particular
11 occurred for each count.

12 You must be unanimous on which mailing you find
13 satisfies this element, but you need only agree on one mailing
14 for each count to find this element satisfied.

15 Similarly, as to Counts Two and Four, in order to find
16 this element satisfied, you must unanimously agree that at
17 least one particular wire communication set forth in the bills
18 of particulars satisfies this element for that count.

19 As with mailings, you must be unanimous on which wire
20 communication the government has proven beyond a reasonable
21 doubt, but you only need to find one wire communication for
22 each count.

23 The government does not need to prove that the
24 mailings or wire communication was made on the exact date
25 listed in the bill of particulars.

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1 It is sufficient if the evidence establishes beyond a
2 reasonable doubt that the mailing or wire communication was
3 made on a date substantially similar to the date listed in the
4 bill of particulars.

5 Counts Five and Six charge Mr. Silver with extortion
6 under color of official right. As commonly used, the term
7 "extortion" mean coercing someone to voluntarily give up
8 property as a result of threats of force or violence, a classic
9 example being the school bully forcing the nice boy to give up
10 his lunch money to avoid a punch in the nose.

11 Extortion under color of official right is a little
12 different. Extortion under color of official right occurs when
13 a person uses his position as a public official to obtain
14 property not due to him as a public official.

15 Counts Five and Six allege that from approximately
16 2000 to January 2015, Mr. Silver engaged in two schemes in
17 which he used his position as Speaker of the Assembly and as an
18 elected legislator to obtain things of value not due to him as
19 a public official, specifically valuable leads for mesothelioma
20 lawsuits and tax certiorari business in exchange for official
21 actions.

22 To sustain its burden of proof on Counts Five and Six,
23 the government must prove beyond a reasonable doubt each of the
24 following four elements:

25 First, that Mr. Silver was a public official or held

FBOYSIL1

Charge

1 public office;

2 Second, that Mr. Silver obtained property not due to
3 him as a public official;

4 Third, that the property was given to Mr. Silver with
5 the consent of the giver and because of Mr. Silver's official
6 position and that Mr. Silver knew that the property was given
7 because of his official position;

8 And, fourth, that interstate commerce or an item
9 moving in interstate commerce was delayed, obstructed, or
10 affected in some way or degree.

11 The first element the government must prove beyond a
12 reasonable doubt is that at the time of the events charged in
13 the indictment, Mr. Silver was a public official or held public
14 office.

15 The second element the government must prove beyond a
16 reasonable doubt is that Mr. Silver obtained property that was
17 not legitimately owed to the public office Mr. Silver occupied.

18 The term "property" includes money and tangible and
19 intangible things of value that are capable of being
20 transferred or given from one person to another.

21 In Count Five the government alleges that the property
22 that was given was leads for mesothelioma cases. Leads are
23 information about the mesothelioma patients that can be used by
24 attorneys to make contact with and possibly obtain the patients
25 as clients of the firm.

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Charge

1 If you find, first, that Dr. Taub gave such
2 information to Mr. Silver; and, two, that the information had
3 value; and, three, that such information can be transferred
4 from one person to another, then you should proceed to consider
5 this element.

6 On the other hand, if you conclude, one, that Dr. Taub
7 only recommended Mr. Silver at Weitz & Luxenberg to his
8 patients; or, two, that Dr. Taub did not provide leads
9 regarding his mesothelioma patients to Mr. Silver; or, three,
10 that the leads did not have value; or, four, that such leads
11 are not transferable from one person to another, then the
12 government has not proven that property as required by this
13 element was obtained. In that instance, you must find that
14 Mr. Silver is not guilty of Count Five.

15 In Count Six, the government alleges that the property
16 was Glenwood and Witkoff's tax certiorari business that was
17 given to Jay Arthur Goldberg or Golberg & Iryami.

18 If you find that, one, Glenwood or Witkoff gave some
19 of its tax certiorari business to Jay Arthur Goldberg or
20 Golberg & Iryami; and, two, that the developers' tax certiorari
21 business had value; and, three, that such business could be
22 transferred from one person to another, then you should proceed
23 to consider this element.

24 On the other hand, if you determine that, one, neither
25 Glenwood nor Witkoff gave any of their tax certiorari business

FBOYSIL1

Charge

1 to Jay Arthur Goldberg or Golberg & Iryami; or, two, neither of
2 the developers' tax certiorari business had value; or, three,
3 such business could not be transferred from one person to
4 another, then the government has not proven that property, as
5 required by this element, was obtained. In that instance, you
6 must find Mr. Silver not guilty of Count Six.

7 In order to prove this element, the government must
8 prove beyond a reasonable doubt that Mr. Silver or a third
9 party at the direction of Mr. Silver obtained property that was
10 not legitimately owed to Mr. Silver in his official capacity.

11 The government does not have to prove that the
12 extorted property was of a personal benefit to Mr. Silver or
13 that it was given to him directly.

14 It is sufficient for this element that the extorted
15 party gave property to another, either to Mr. Silver or to a
16 third party at the direction of Mr. Silver.

17 The third element that the government must prove
18 beyond a reasonable doubt is that Mr. Silver used the authority
19 of his public office to obtain the extorted property for
20 himself or for a third party and that the extorted property was
21 given, at least in part, because of Mr. Silver's official
22 position.

23 In addition, as was the case when I charged you on
24 honest services fraud, the extortion counts require the
25 government to prove beyond a reasonable doubt the existence of

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Charge

1 a quid pro quo.

2 As I explained to you earlier, a quid pro quo is
3 Latin, and it means this for that or these for those.

4 To prove a quid pro quo, the government must prove
5 that property was sought or received by Mr. Silver, directly or
6 indirectly, in exchange for the promise or performance of
7 official action.

8 To satisfy this element, the government must prove
9 beyond a reasonable doubt that Mr. Silver obtained property to
10 which he was not entitled by his public office knowing that it
11 was given in return for official acts as the opportunity arose
12 rather than being given voluntarily and unrelated to
13 Mr. Silver's public office.

14 The government must also prove beyond a reasonable
15 doubt that the extorted party was motivated, at least in part,
16 by the expectation that as a result of the payment, Mr. Silver
17 would exercise official influence or decision-making for the
18 benefit of the extorted party and that Mr. Silver was aware of
19 their motivation.

20 If you find that Mr. Silver understood that the
21 property at issue was given solely to cultivate goodwill or to
22 nurture a relationship with the person or entity who gave the
23 property and not in exchange for any official action, then this
24 element has not been proven.

25 On the other hand, if you find that Mr. Silver

FBOYSIL1

Charge

1 accepted the property intending, at least in part, to take
2 official action in exchange for those payments as the
3 opportunities arose, then this element has been satisfied.

4 Again, as I charged you earlier, it is not necessary
5 that Mr. Silver or the person giving the property state the
6 quid pro quo in express or explicit terms.

7 A quid pro quo can be implied from Mr. Silver's words
8 and actions so long as you find that Mr. Silver intended there
9 to be a quid pro quo.

10 The government also does not have to prove that the
11 property that was extorted was given directly to Mr. Silver.
12 It is sufficient for the government to prove that the property
13 was given to a third party at Mr. Silver's direction.

14 This element can be satisfied even if the extorted
15 party initiated the quid pro quo and even if the extorted party
16 and Mr. Silver had a friendly relationship.

17 If you find either to be the case, however, each is a
18 factor that you should consider in deciding whether the
19 extorted party was motivated, at least in part, to give
20 property because of a belief that Mr. Silver would take
21 official action in exchange for the property rather than for
22 some other entirely innocent reason.

23 The government's burden is to prove that the promise
24 or performance of official action was at least a part of the
25 motivation for the extorted party to give over the property.

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Charge

1 Thus, if you find that the transfer of property was
2 for entirely innocent reasons stemming from friendship or any
3 other innocent reason, then this element will not have been
4 proven.

5 The government does not need to prove that Mr. Silver
6 could or actually did perform any specific official act on
7 behalf of the extorted party.

8 If Mr. Silver did take official action on behalf of
9 the extorted party, it does not matter if the actions he took
10 were desirable or beneficial or that he would have taken the
11 same action regardless of the receipt of property from the
12 extorted party.

13 The extortion laws, like the honest services fraud
14 laws, are concerned with the manner in which the public
15 official takes action, not with whether the official's actions
16 are good or bad.

17 If you decide that Mr. Silver obtained property from
18 another under color of official right, then you must determine
19 whether this action affected interstate commerce in any way or
20 degree; that is, you must determine whether there was an actual
21 or potential effect on commerce between two or more states.

22 Commerce between two states just means that items are
23 bought and sold by entities located in different states. It is
24 not necessary for the government to prove that commerce
25 actually was affected by Mr. Silver's conduct or that

FBOYSIL1

Charge

1 Mr. Silver intended or anticipated that his actions would
2 affect interstate commerce.

3 It is sufficient if you find that Mr. Silver's conduct
4 possibly or potentially could have affected interstate or
5 foreign commerce.

6 The government only needs to prove a very slight or
7 subtle actual or potential effect on interstate commerce.

8 This element is also proven if the natural consequence
9 of Mr. Silver's actions was an actual or potential effect on
10 interstate or foreign commerce.

11 Count Seven of the indictment charges Mr. Silver with
12 the crime of money laundering. Specifically Count Seven
13 charges that Mr. Silver knowingly transferred into various
14 investments more than \$10,000 received from the criminal
15 schemes alleged in Counts One through Six.

16 You should only consider this charge if you have first
17 found Mr. Silver guilty of at least one of the offenses in
18 Counts One through Six.

19 To sustain its burden of proof on Count Seven, the
20 government must prove beyond a reasonable doubt each of the
21 following elements:

22 First, that Mr. Silver engaged in a monetary
23 transaction in or affecting interstate commerce;

24 Second, that the monetary transaction involved
25 criminally derived property worth more than \$10,000;

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Charge

1 Third, that the property came from specified unlawful
2 activity;

3 Fourth, that Mr. Silver acted knowingly, meaning with
4 knowledge that the transaction involved proceeds of a criminal
5 offense;

6 And, fifth, that the transaction took place in the
7 United States or that Mr. Silver is a United States person.

8 The first element that the government must prove
9 beyond a reasonable doubt is that Mr. Silver engaged in a
10 monetary transaction in or affecting interstate commerce.

11 A monetary transaction is a deposit, withdrawal,
12 transfer, or exchange of funds or a monetary instrument by,
13 through, or to a financial institution.

14 A monetary instrument is anything that represents
15 money such as coins or currency, personal checks, traveler's
16 checks, cashier's check, bank checks, money orders, investment
17 securities, or negotiable instruments.

18 A financial institution is a bank insured by the
19 Federal Deposit Insurance company, FDIC, a commercial bank, or
20 a trust company.

21 The transaction must be in or affecting interstate or
22 foreign commerce.

23 The term "interstate or foreign commerce" means
24 commerce between states, territories, or possessions of the
25 United States or between the United States and a foreign

FBOYSIL1

Charge

1 country.

2 To satisfy this element, the government must prove
3 that the transaction affected interstate or foreign commerce in
4 some way, however minimal. There are several ways a
5 transaction can affect interstate or foreign commerce.

6 First, any monetary transaction by or through a
7 financial institution insured by the FDIC affects interstate
8 commerce.

9 (Continued on next page)

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Charge

1 THE COURT: Therefore, if you find that any of the
2 financial institutions involved in the financial transactions
3 at issue was insured by the FDIC, that aspect of this element
4 will have been proven.

5 Second, if you find that the source of the funds used
6 in the transaction affect interstate or foreign commerce, that
7 is sufficient to satisfy this aspect of the first element as
8 well.

9 Finally, if you find that the transaction itself
10 involved an interstate transfer of funds, that would also be
11 sufficient.

12 The second element that the government must prove
13 beyond a reasonable doubt is that the monetary transaction
14 involved criminally derived property having a value in excess
15 of \$10,000. Properly is criminally derived if it is the
16 proceeds of or comes from proceeds obtained from a criminal
17 offense. The term proceeds means any property obtained,
18 directly or indirectly, through some form of unlawful activity.

19 The government is not required to prove that all of
20 the property involved in the transaction at issue was
21 criminally derived property. The government must prove,
22 however, beyond a reasonable doubt, that more than \$10,000 of
23 the property involved was criminally derived property in order
24 to satisfy this element.

25 The third element that the government must prove

FBO5sil2

Charge

1 beyond a reasonable doubt is that the property involved in the
2 financial transaction is the proceeds of specified unlawful
3 activity. In this case the government has charged that the
4 property was derived from Mr. Silver's participation and the
5 honest services fraud and extortion schemes charged in Counts
6 One through Six. I charge you as a matter of law that honest
7 services fraud and extortion under color of official right meet
8 the definition of specified unlawful activity. Thus, if you
9 find that the property at issue was derived, at least in part,
10 from any of the crimes charged in Counts One through Six, this
11 element will have been proven.

12 The fourth element that the government must prove
13 beyond a reasonable doubt is that Mr. Silver knowingly engaged
14 in an unlawful monetary transaction. As I charged you
15 previously, knowingly means to act voluntarily and
16 deliberately, rather than mistakenly or inadvertently. The
17 government is not required to prove that Mr. Silver knew the
18 particular offense from which the criminally derived property
19 came. The government must prove, however, beyond a reasonable
20 doubt, that Mr. Silver knew that the transaction involved
21 criminally derived property, that is, property derived from
22 proceeds of a criminal offense.

23 The fifth element that the government must prove
24 beyond a reasonable doubt is that the transaction took place in
25 the United States and that Mr. Silver is a United States

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Charge

1 person.

2 A United States person is a citizen or national of the
3 United States or an alien lawfully permitted to permanently
4 reside in the United States. Each of the counts of the
5 indictment charges Mr. Silver with acting as a principal and as
6 one who caused the commission of the individually charged
7 crimes.

8 Under federal law, Mr. Silver can be held liable for
9 the crimes set forth in Counts One through Seven either as a
10 principal or as someone who willfully caused others to commit
11 the acts that constitute the offenses charged. A person
12 willfully causes a crime to be committed if he willfully takes
13 some action that causes another to commit the criminal act and
14 if he intended that the crime actually be committed. I
15 previously defined willfully and that definition applies here
16 as well. If Mr. Silver did both of those things then he is
17 guilty just as he would be if he committed the crime himself.

18 To find Mr. Silver liable under this provision of
19 federal law the government need not prove that Mr. Silver acted
20 through a guilty intermediary. That is, Mr. Silver can be
21 found liable even if he acted through someone who is entirely
22 innocent of the crimes charged in the indictment.

23 In addition to proving the essential elements of each
24 crime charged beyond a reasonable doubt, the government must
25 also establish what is called venue. That is, that some act

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Charge

1 pertaining to the charge occurred in the Southern District of
2 New York. The Southern District of New York includes all of
3 Manhattan and the Bronx as well as Westchester, Rockland,
4 Putnam, Dutchess, Orange, and Sullivan Counties.

5 The government does not have to prove that the
6 complete crime was committed within the Southern District of
7 New York or that Mr. Silver was ever in the Southern District
8 of New York. It is sufficient to satisfy the venue requirement
9 if any act, in furtherance of the crime charged, occurred in
10 the district. The act itself need not be a criminal act, it
11 could include, for example, meeting with others involved in the
12 criminal scheme within this district and the act need not have
13 been taken by Mr. Silver so long as the act was part of the
14 crime that you find that Mr. Silver committed.

15 Unlike the elements of the offenses that I have just
16 discussed at length which must be proved beyond a reasonable
17 doubt, the government is only required to prove venue by a
18 preponderance of the evidence. A preponderance of the evidence
19 means that it is more probable than not that some act, in
20 furtherance of the crime that you were considering, occurred in
21 this district. If you find that the government failed to prove
22 venue by a preponderance of the evidence as to any count, you
23 must return a verdict of not guilty as to that count.

24 You have heard testimony that Mr. Silver made
25 statements outside the courtroom in which he claimed that his

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Charge

1 conduct was consistent with innocence and not with guilt. The
2 government claims that these statements in which Mr. Silver
3 exculpated himself are false. If you find that Mr. Silver gave
4 a false statement in order to divert suspicion from himself,
5 you may but are not required to infer that Mr. Silver believed
6 that he was guilty. You may not, however, infer on the basis
7 of that alone, that Mr. Silver is in fact guilty of the crimes
8 for which he is charged. Whether the evidence as to
9 Mr. Silver's statement shows that Mr. Silver believes that he
10 was guilty and the significance, if any, to be attached to any
11 such evidence are matters for you to decide.

12 You have heard references in this case to the fact
13 that certain investigative techniques were used by the
14 government. While you must carefully consider the evidence
15 adduced by the government, you should not speculate as to why
16 the government used the techniques it did. The government and
17 its law enforcement techniques are not on trial. Your
18 responsibility is to determine whether or not, based on the
19 evidence or lack of evidence, the government has proven
20 Mr. Silver's guilt beyond a reasonable doubt.

21 Some of the people who may have been involved in the
22 schemes at issue in this case are not on trial. There is no
23 requirement that all members of an illegal scheme be charged
24 and prosecuted or tried together in the same proceeding. You
25 may not speculate why other persons who may have been involved

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Charge

1 in the charged schemes are not on trial.

2 You heard testimony regarding and were shown several
3 years of financial disclosure forms filed by Sheldon Silver
4 pursuant to state law. Mr. Silver has not been charged with
5 any crime based on the way he filled out his financial
6 disclosure forms. You may not find Mr. Silver guilty on any
7 count merely because you believe he should have disclosed more
8 or different information on those forms. If, however, you find
9 that Mr. Silver knowingly did not fully disclose information
10 sought on those forms, you may consider that as evidence of
11 Mr. Silver's state of mind or as evidence of an intent to
12 mislead the public or to conceal from the public information
13 regarding the nature and source of his income.

14 The statute of limitations for each of the charged
15 crimes is five years. If you find that Mr. Silver engaged in
16 the scheme to commit honest services fraud, extortion, or money
17 laundering but no aspect of the particular scheme occurred
18 after February 19th, 2010, then you must acquit on that charge
19 because it is barred by the statute of limitations.

20 If, on the other hand, you find that any aspect of the
21 crime you are considering continued on or after February 19,
22 2010, then the statute of limitations as to that charge has
23 been complied with.

24 You are about to begin your deliberations. We will
25 send all of the exhibits in to the jury room for your use

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Charge

1 during deliberations. If you want any further explanation of
2 the law or to hear any testimony read back, you may request
3 that. If you ask for any testimony to be reread, please be as
4 specific as possible so that we can identify exactly what you
5 want to be read and not waste time reading testimony you do not
6 want read back.

7 If there is any doubt or question about the meaning of
8 any part of the instructions that I have given to you, you
9 should not hesitate to send me a note asking for clarification
10 or for further explanation.

11 It is very important that you not communicate with
12 anyone outside the jury room about your deliberations or about
13 anything touching on this case. There is only one exception to
14 this rule. If it becomes necessary during your deliberations
15 to communicate with me, you should send a note to me, in
16 writing, signed by your foreperson, and give it to the marshal
17 who will be available outside the jury room during your
18 deliberations.

19 No member of the jury should ever attempt to
20 communicate with me except by a signed writing and I will never
21 communicate with a member of the jury on any subject touching
22 open the merits of this case other than in writing or orally
23 here in open court.

24 If you send any notes to the Court do not disclose
25 anything about your deliberations. Specifically, do not

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Charge

1 disclose to anyone, not even to me, how the jury stands
2 numerically or otherwise, until you have reached a unanimous
3 verdict or have been discharged.

4 Some of you have taken notes throughout the trial. I
5 want to emphasize to you that notes are simply an aid to
6 memory. Your notes may not be given any greater weight or
7 influence in the determination of the case than the
8 recollections of other jurors. Any difference between a
9 juror's recollection and another juror's notes should be
10 settled by asking to have the court reporter read back the
11 transcript because it is the court record that the jury must
12 rely on when making its determination of the facts and
13 rendering a verdict.

14 You will now retire to decide your verdict on each of
15 the seven counts of the indictment. As I have already
16 explained, for the government to prevail on a particular charge
17 the government must prove each essential element of that charge
18 beyond a reasonable doubt. If the government carries its
19 burden, you must find Mr. Silver guilty on that charge.
20 Otherwise, you must find him not guilty and acquit him on that
21 charge.

22 Your verdict on each count must be unanimous. Each
23 juror is entitled to his or her opinion but you are required to
24 exchange views with your fellow jurors. That is the very
25 essence of jury deliberation. If you have a point of view and

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Charge

1 after discussing it with the other jurors it appears that your
2 own judgment is open to question, then of course you should not
3 hesitate to yield your original point of view if you were
4 convinced that the other view is one that satisfies your
5 judgment and conscience.

6 Do not give up a point of view that you
7 conscientiously believe simply because you are outnumbered.
8 You should vote with the others only if you are convinced on
9 the evidence, the facts, and the law that it is the correct way
10 to decide the case.

11 After any breaks or when you arrive in the morning if
12 your deliberations last more than one day, do not begin to
13 discuss the case until all 12 jurors are present.

14 The first thing you should do when you retire to
15 deliberate is to select one of you to act as your foreperson.
16 Traditionally juror no. 1 is the foreperson but that is only a
17 tradition. You are free to select any of your members as your
18 foreperson but I urge you not to spend a lot of time on that
19 issue.

20 Once you have reached your verdict you must record it
21 on the verdict form that I have prepared for you. The
22 foreperson should fill in the verdict sheet, date it, and sign
23 it. The foreperson should then give a note to the marshal
24 outside your door stating that you have reached a verdict. Do
25 not specify what the verdict is in the note. The foreperson

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Charge

1 should keep the verdict sheet until I ask for it. You must all
2 be in agreement with the verdict that is announced in court.

3 Please remain seated while I confer with the
4 attorneys.

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Charge

1 (At side bar)

2 THE COURT: Any objection?

3 MR. MOLO: No objection.

4 THE COURT: Any objection?

5 MS. COHEN: Your Honor, we would just request two
6 additional charges. And apologies for not noticing this
7 earlier because the indictment is going back to the jury. We
8 had requested a variance in dates and amounts and so we request
9 that your Honor give a variance in dates and amounts similar to
10 the one we proposed in our request to charge.

11 THE COURT: Any objection?

12 MR. MOLO: Yes. I have not even seen this. I don't
13 see the point in it.

14 THE COURT: Read it.

15 MS. COHEN: And it was in our original request to
16 charge.

17 MR. MOLO: I object to this.

18 THE COURT: Okay. Overruled.

19 MS. COHEN: The other one, your Honor, is just
20 redaction of evidentiary items, just an instruction again in
21 our original request to charge.

22 MR. MOLO: Objection.

23 We had an instruction conference. We went through
24 charge drafts and drafts of charges and now, after the jury is
25 charged, they're asking that more instructions be given which

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Charge

1 are going to be given a different weight because they weren't
2 part of the whole charge? This is ridiculous. I have never
3 seen this happen. This is absolutely ridiculous.

4 Objection.

5 THE COURT: Overruled. But I agree. The government
6 should have taken it up in the charge conference.

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Charge

1 (In open court)

2 THE COURT: Ladies and gentlemen, just a couple of
3 other things. The evidentiary items are going back. You will
4 notice in those items that a number of things have been
5 redacted or are removed from the document. You are to concern
6 yourself only with the part of the item that has been admitted
7 into evidence. Don't speculate as to the reason why any other
8 part of the document has been removed or redacted.

9 The second thing is I'm going to send the indictment
10 back. The indictment refers to various dates and amounts of
11 financial items. I instruct you that it does not matter if a
12 specific event is alleged to have occurred on or about a
13 certain date or a certain month but the evidence indicates that
14 in fact it was on a different date or in a different month.
15 Nor does it matter if the indictment alleges that a transaction
16 involved a specific amount of money but the evidence indicates
17 that it was different amount. The law requires only a
18 substantial similarity between the dates, months, and amounts
19 alleged in the indictment and the dates, months, and amounts
20 established by the evidence.

21 Mr. Brantley, could you swear the marshal?

22 THE DEPUTY CLERK: Yes, your Honor.

23 (Marshal sworn)

24 THE COURT: Ladies and gentlemen, as you know, I moved
25 the trial to a larger courtroom for the purposes of the

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Deliberations

1 openings and summations. I did that in order to accommodate
2 the number of people who wanted to hear the jury addresses
3 because they could not all fit in this courtroom. I charge you
4 that any public interest that might exist in this trial can
5 play absolutely no role in your decision making.

6 I remind you of the very beginning of the case you
7 took an oath. Your oath sums up your duty. You must well and
8 truly try the matters in issue and render a true verdict
9 according to the law and the evidence.

10 You may now retire to the jury room and begin your
11 deliberations. I will ask the two alternates to stay in the
12 courtroom.

13 (10:54 a.m. the jury retired to deliberate)

14 (Continued on next page)

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Deliberations

1 (Jury not present)

2 THE COURT: Please be seated, everybody.

3 All right, gentlemen. You have sat through the whole
4 trial and you are now -- everybody else is deliberating. I'm
5 not excusing you yet, though. It is possible, highly unlikely
6 but possible, that one of the jurors may fall sick and we are
7 going to need to call on you. So, in order to have that happen
8 you are going to remain under the same rules that you have been
9 under. You can't talk about the case, you can't read about the
10 case, don't read about any other corruption case that's going
11 on now just in case we have to call you in. If that happens,
12 you will restart deliberations and it will be as though you
13 were a jury all along.

14 What I am going to ask you to do is to call
15 Mr. Brantley every day between 5:00 and 5:30 until he tells you
16 everything is over. That way if we need you, we know that we
17 will be in contact with you and will call you and let you know
18 that you need to come in. It is okay for you to go back to
19 work now but just make sure that if you do, let your boss know
20 that it is possible that you are going to be called back for
21 further jury service.

22 So, with that, and the thanks of the Court, you are
23 excused to leave here but, again, don't talk about the case and
24 don't read anything or follow any press on the case.

25 (alternates discharged)

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Deliberations

1 THE COURT: Okay. I think I ordered their lunch at
2 12:45, so make sure that Mr. Brantley knows where you are in
3 case we get a note. You are free between 12:45 and 1:45 and I
4 think as I told them yesterday, they need to work at least
5 until 5:30, hopefully not beyond that, I have a commitment
6 tonight so I can't stay late.

7 Anything from the parties?

8 MS. COHEN: Your Honor, is it okay if we either stay
9 in the courtroom and/or leave stuff on the tables? Or do you
10 have other matters.

11 THE COURT: I don't think I have any. Let me check.

12 THE DEPUTY CLERK: No.

13 THE COURT: I don't have anything on today.

14 Their lunch was ordered at 12:45?

15 THE DEPUTY CLERK: Yes, Judge.

16 THE COURT: So you can leave things on the table if
17 you want but, again --

18 THE MARSHAL: A juror left her book.

19 THE COURT: Okay.

20 -- make sure Mr. Brantley knows where you are.

21 MS. COHEN: Your Honor, we will review the redacted
22 indictment with defense counsel and alert Mr. Brantley when it
23 is ready, and we have the bill of particulars.

24 THE COURT: And the exhibits also?

25 MS. COHEN: And the exhibits are done and in the cart.

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Deliberations

1 THE COURT: They're done and in the cart? Where is
2 the cart?

3 MS. COHEN: They're just in 444. We will alert
4 Mr. Brantley when it is wheeled in. And also in the cart there
5 is a laptop, nothing else is on it except the recording.

6 THE COURT: Except the recordings?

7 MS. COHEN: Correct, that were entered into evidence.

8 THE COURT: Thank you.

9 (Recess Pending verdict)

10 (Whereupon, at 12:19 p.m. a note was received from the
11 Jury.)

12 THE COURT: Okay. Ladies and gentlemen, we have a
13 note from the jury -- from a juror -- it has been marked as
14 Court Exhibit 8. It reads, as follows:

15 "Dear Judge Caproni, I am wondering if there is any
16 way I can be excused from this case, because I have a different
17 opinion/view so far as this case and it is making me feel very,
18 very uncomfortable... I am feeling pressured, stressed out...
19 told that I'm not using my common sense, my heart is pounding
20 and my head feels weird. I am so stressed out right now that I
21 can't even write normally. I don't feel like I can be myself
22 right now. I need to leave!"

23 Would the parties like to be heard?

24 MS. COHEN: Your Honor, based on the statements in
25 this note and the fact that it is extremely early in the jury

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1 deliberation, the government would request that you call an
2 alternate in and excuse this juror.

3 THE COURT: Mr. Molo?

4 MR. MOLO: No. This is jury deliberations. She has
5 been charged, she has taken an oath, and she should continue
6 the process, to work it out. This is what happens in
7 deliberations.

8 THE COURT: I have to say that's my inclination, is
9 that it is too early for a juror to throw in the towel.

10 MS. COHEN: My only concern, your Honor, is that based
11 on the way in which she wrote the note, she said her heart is
12 pounding, my head feels weird, I am so stressed out I can't
13 think straight, perhaps it is more severe and we don't want it
14 to affect the rest of the jury early in the deliberation.

15 THE COURT: Perhaps, but it seems that I can call out
16 the jury and encourage them, let me reread the portion of the
17 charge on deliberation and remind them their deliberations need
18 to be respectful of everyone's view and that they need to
19 continue to deliberate.

20 MS. COHEN: I don't know, your Honor, if it is
21 possible to perhaps make an inquiry of the juror to see how
22 stressed, or if she's able to think at all. That might be in
23 order based on the note.

24 THE COURT: Mr. Molo, you are poised. I can tell.

25 MR. MOLO: Well, I assume that you want to hear from

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Deliberations

1 me.

2 THE COURT: I feel that I should.

3 MR. MOLO: This is jury deliberations. I don't even
4 know that it is necessary to bring them out and reinstruct them
5 on that. I mean, I think we can do that but I don't --

6 THE COURT: I am reluctant to just ignore the note. I
7 don't think I can do that.

8 MR. MOLO: By the way, I do agree with that.

9 THE COURT: So the choice is individually calling her
10 into the robing room to take her temperature to see whether
11 she's really in distress or whether this is just normal
12 deliberations and people need to deliberate.

13 MR. MOLO: Then I think having them come out and just
14 instructed on that point again is fine. I think we will see
15 what happens.

16 THE COURT: Here is the question. My inclination, my
17 normal process when I bring out the jury after they send me a
18 note is for me to read the note. I don't know if her fellow
19 jurors know what she just wrote. My inclination would be to
20 follow my normal process, read the note, recharge the jury on
21 deliberations.

22 MS. COHEN: Your Honor, because I'm not sure if this
23 is a note from a specific juror and not from the jury, I think
24 it might make sense, initially at least, to inquire of the
25 juror independently.

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1 MR. MOLO: And what I would suggest is that you not
2 read that individual note but just come out, instruct them
3 generally on that because it isn't a note from the jury in that
4 sense, it is a note from a juror, but I think reinstructing
5 them on that point about collaboration and deliberation would
6 be appropriate.

7 MS. COHEN: I guess, your Honor, I would just say that
8 I think the better course would be to inquire of the juror in
9 the robing room alone and then if your Honor felt the entire
10 jury needed to be instructed on deliberations, that might be
11 appropriate then.

12 THE COURT: I'm concerned that just calling out the
13 one juror into the robing room is coercive. That's my concern.

14 MR. MOLO: I agree. I think it is only -- it only
15 holds the prospect of making this worse, rather than better, so
16 I would agree. I think just calling them out and having that
17 instruction reread on the deliberation process is appropriate.

18 THE COURT: Hang on for a second.

19 MS. COHEN: I guess, your Honor my concern -- sorry.

20 (Pause)

21 THE COURT: Okay, Ms. Cohen, I'm sorry. I cut you
22 off. You were about to say something?

23 MS. COHEN: Your Honor, I'm happy to hear what your
24 Honor's proposal is and then I may have a response.

25 THE COURT: Okay.

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1 So, I am inclined to do the following: Not to read
2 the note but to say I have received a note from a juror
3 regarding the process of deliberation. I want to remind you
4 that each juror is entitled to his or her opinion, that you are
5 also required to respectfully exchange views with your fellow
6 jurors. Then, continue with the regular deliberation charge
7 down to, "you should vote with the others only if you are
8 convinced on the evidence, the facts, and the law that is the
9 correct way to decide the case. That said, let me remind you
10 all that the essence of deliberation is to listen to it and to
11 exchange views with your fellow jurors."

12 MR. MOLO: I think that's fine, Judge.

13 MS. COHEN: I think that's fine, although the
14 government still has a preference that you talk to the juror
15 and I'm sure that your Honor would be able to do it in a way
16 that was not coercive at all. But, based on the text of this
17 note, the government really strongly believes that that is
18 necessary.

19 THE COURT: Okay. I appreciate the government's view.
20 I think this was very early to get a note like this which may
21 mean nothing, and I am concerned that talking to the juror
22 individually may make it into more than it is. That said, I
23 don't think that we can just ignore it, which I have at times
24 early in deliberations when I have gotten a note that says we
25 are hopelessly deadlocked after 10 minutes. Those I have felt

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Deliberations

1 comfortable to ignore. This one I don't really feel
2 comfortable.

3 Uh-oh.

4 (Whereupon, At 12:42 a note was received from the
5 jury)

6 THE COURT: Okay. They're deliberating. it's clear.
7 So what is our next number, no. 9?

8 Court Exhibit 9 reads: "One of the jurors is having
9 difficulty distinguishing whether or not exchanging NYS funds
10 for something in return is illegal. Is there a code of conduct
11 (ethics) which clearly outlines this is the case for an
12 Assembly person?"

13 So, given this note, it seems that there is some
14 deliberation going on so I am inclined to combine the answer to
15 these two questions in one felled swoop.

16 So, what are the parties' thoughts on this?

17 MR. MOLO: The answer to the question is that you have
18 heard the evidence and the evidence shall be what you decide
19 the case on.

20 THE COURT: I don't think that's an adequate answer.

21 MS. COHEN: Your Honor, I believe the jury
22 instructions that your Honor gave address at least part of this
23 and they're to follow the law and not the code of conduct. We
24 can pull from the jury instructions which one, perhaps, to read
25 back.

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1 THE COURT: Yes.

2 MR. COHEN: It is not showing on our screen. Can you
3 read that back, please?

4 THE COURT: Yes.

5 "One of the jurors is having difficulty distinguishing
6 whether or not exchanging New York State funds for something in
7 return is illegal. Is there a code of conduct (ethics) which
8 clearly outlines this is this is the case for an Assembly
9 person?"

10 Tell you what. Why don't we take a little break.
11 Let's everybody think about what the right answer to this is.
12 Okay? So, I will see you again in about 10 minutes, 15
13 minutes.

14 MR. COHEN: If I can trouble your Honor for a copy?

15 THE COURT: We will get you a copy. We don't have a
16 copy machine down here.

17 The press would like a copy for the press.

18 MR. WEISER: If we can have a copy for the press after
19 you make it an exhibit? We will share it among the press.

20 THE COURT: Okay.

21 Mr. Weiser, they seem to be signing their names. We
22 are going to redact their names from the version that goes to
23 the press.

24 MR. WEISER: That's fine. Thank you.

25 (Recess pending verdict)

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Deliberations

1 THE COURT: Okay, with the 15-minute break, what have
2 you thought?

3 MS. COHEN: Your Honor, the government has a proposal
4 that we would like the Court to instruct the jury.

5 THE COURT: Okay.

6 MS. COHEN: I have it written out and I will read it
7 and I can hand it up.

8 The government requests that the Court charge the jury
9 that the jury should take the charge as a whole but direct the
10 jury's attention to page 15, line 17, beginning at the sentence
11 that says, "A public official... continuing through the
12 sentence that ends on line 20.

13 THE COURT: I'm sorry. Wait a minute. Page 15, line
14 what?

15 MS. COHEN: Line 17, starting with, "A public official
16 owes a duty...

17 THE COURT: Okay, I probably would have started on 16
18 just for the beginning of the paragraph.

19 MS. COHEN: Sure. Then your Honor could read that
20 whole paragraph, 16 through 20, as well as on page 17, the
21 third sentence which begins on line 22 starting with, "Official
22 action... and that sentence ending on line 23.

23 THE COURT: Page 17, line?

24 MS. COHEN: 22, the sentence that begins, "Official
25 action.

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Deliberations

1 THE COURT: Right.

2 MS. COHEN: Just that one sentence, it ends on line
3 23. And then add: I instruct you as a matter of law that
4 official action includes distribution of state funds.

5 MR. MOLO: Your Honor, I object to that.

6 THE COURT: You look like a bobble head.

7 MR. MOLO: I'm sorry?

8 THE COURT: I said you look like a bobble head shaking
9 your head.

10 MR. MOLO: I don't mean to look like a bobble head, I
11 mean to look like a lawyer who wants the jury to be instructed
12 to follow the law.

13 THE COURT: That's all you want me to tell them, is
14 just follow the law?

15 MR. MOLO: I think that what I want you to tell them
16 is that they have heard the evidence, they have been instructed
17 on the law, and that they should follow the law and apply the
18 law to the evidence that they have heard. I think it is
19 improper to call out specific instructions that aren't
20 necessarily addressed to the specific question that is raised.

21 The specific question that is raised deals with
22 whether there is a code of conduct which clearly outlines this
23 as the case for New York Assembly persons. There is a specific
24 question. It now sort of being, saying, well, here is how you
25 address that or get around it is advocacy on the part of the

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Deliberations

1 government's position and I believe that that's inappropriate.

2 They have been instructed. They've heard the
3 evidence, they have been instructed on the law and they should
4 follow the law. I don't see there is any reason that we need
5 to -- this is not a question of deliberation, that issue that
6 we are talking about. Now we are getting into the question of
7 substantive law so I think it is completely appropriate. Why
8 don't we also then, if they're going to do that, why don't we
9 talk about instructing them on some things that are the
10 question of willfulness and burden of proof?

11 THE COURT: Well, I'm not going to totally recharge
12 the jury.

13 MR. MOLO: Well, that's what I mean. That's what I
14 think, you know, if we are going to be singling out
15 instructions that the government finds helpful to their
16 position, I would like also the burden of proof in the
17 instruction to be read.

18 THE COURT: Mr. Molo, don't go off.

19 MR. MOLO: All right, but that's my --

20 THE COURT: That's not helpful.

21 MR. MOLO: That's my point. I agree it is not
22 helpful. They have the instructions, they've been instructed
23 on the law.

24 THE COURT: Mr. Molo, let me tell you my concern with
25 that approach.

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Deliberations

1 MR. MOLO: Okay.

2 THE COURT: They were just instructed. They've got
3 the charge.

4 MR. MOLO: Okay.

5 THE COURT: This is a clear question which, in some
6 ways the answer is: Code of conduct is irrelevant. Under
7 federal law it is illegal to exchange New York State funds for
8 personal benefit. I mean, that's kind of the short answer to
9 their question. It is not a matter of the code of conduct.
10 But, just saying I have charged you on the law is obviously
11 inadequate because they have this question which seems like a
12 very basic question and seems -- I mean, I was thinking in
13 terms of I see this as touching on two issues. It touches on
14 *quid pro quo* and it touches on what is official action. That's
15 how I am reading the question. So, my thought was actually to
16 answer that question and to say, I have something written too
17 but to say I am interpreting your question to be one that
18 relates either to the issue of *quid pro quo*, which is relevant
19 to honest services fraud counts and to the extortion counts, or
20 to the issue of what is an official action for purposes of the
21 extortion count.

22 Starting with *quid pro quo*, if you were to find that
23 the defendant exchanged New York public funds for something in
24 return, that would constitute an illegal *quid pro quo*. That
25 answer comes not from the Assembly's code of conduct but from

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1 federal law. As I charged you before, the thing in return can
2 be to the defendant or to someone else at his direction. In
3 terms of the extortion count, if you find that dispensing with
4 state funds is part of the responsibility of the defendant as a
5 member of the Assembly or as Speaker of the Assembly, then
6 disseminating public funds is an official act.

7 Do you want to see it rather than reacting to it being
8 read to you?

9 MS. COHEN: I would like to see it. We have two just
10 initial reactions.

11 THE COURT: I would also probably add, look, you can
12 take the charge as a whole. I am not short circuiting any of
13 the elements but I'm trying to respond to the question asked.

14 MS. COHEN: And I think responding to the question
15 asked is appropriate since they do have the whole charge and
16 the government would just say in the beginning you talk about
17 *quid pro quo* as it just reads to the extortion count, it should
18 also say the honest services fraud count, what is official
19 action for purposes of the extortion count. I believe that
20 would apply to both counts.

21 THE COURT: Okay. So then --

22 MS. COHEN: And then I think we --

23 THE COURT: Well, official action, in which case I
24 don't need the clauses at all. I can just say I am
25 interpreting your question to be one that relates either to the

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Deliberations

1 issue of *quid pro quo* or to the issue of what is an official
2 act.

3 MS. COHEN: That's fine, your Honor.

4 And then, now that I see it, you have the word that I
5 wanted to add but it is in there.

6 THE COURT: Mr. Molo?

7 MR. MOLO: I would object to the reading of this
8 instruction but I would also ask, and I know we just took a
9 break and you went back and did that, seeing what you are
10 proposing now, may we have another five minutes?

11 THE COURT: Yes.

12 MR. MOLO: I'm sorry. Thank you, five, 10 minutes?

13 THE COURT: Can you keep it at five?

14 MR. MOLO: Yes.

15 MS. COHEN: Your Honor, you are also going to instruct
16 the jury, since we don't know who wrote what second note, as to
17 just the deliberation in general? I think that is appropriate.

18 THE COURT: Yes. What I was going to do is my thought
19 was to start with this, to start with the substantive issue,
20 and then segue and then say I also received a note -- what did
21 I say I was going to say? A second note regarding the process
22 of deliberation. Okay? You want five minutes?

23 MR. MOLO: Yes. Thank you.

24 (Recess pending verdict)

25 MR. COHEN: Mr. Molo will be here in one second, your

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1 Honor.

2 THE COURT: Okay.

3 Mr. Molo?

4 MR. MOLO: Judge, yes. Here is the issue. I mean,
5 the instruction that is being proposed, first of all, as to the
6 second paragraph it even has or can be the defendant or someone
7 else at his direction and I'm not sure where that -- I mean, I
8 understand where that comes from within the instructions. I
9 don't understand exactly where that is responsive to anything
10 raised in the note.

11 The note is very specific and --

12 THE COURT: Hang on a second. Let me tell you why I
13 put that in that.

14 MR. MOLO: Okay.

15 THE COURT: So, I was mimicking the words in the note
16 which is exchanging New York State funds for something in
17 return.

18 MR. MOLO: Right.

19 THE COURT: So, the sentence that says: If you were
20 to find that the defendant exchanged public funds for something
21 in return, that would constitute an illegal *quid pro quo*.

22 My concern was somehow suggesting that it has to go to
23 him personally as opposed to him or someone at his direction.

24 MR. MOLO: Which is not incorporated in the note in
25 any way.

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Deliberations

1 I mean, the problem that --

2 THE COURT: What is your other problem --

3 MR. MOLO: Generally.

4 THE COURT: -- with the proposal.

5 MR. MOLO: As to the first of the two substantive
6 paragraphs, your second paragraph, it doesn't include that the
7 exchange -- that the person that is in this case, the public
8 official, must understand that the person is intending to do
9 more than generate goodwill or build a relationship. There is
10 nothing illegal about directing state funds to Dr. Taub or to
11 Columbia and to New York Presbyterian.

12 THE COURT: For something in return.

13 MR. MOLO: For something in return. But the question
14 is it says but you have got to understand that the person is
15 doing more than generating goodwill or building a relationship.

16 I mean, that's why -- I think this is a very dangerous
17 path. What we are talking about doing is engaging in a
18 colloquy with the jury over various aspects of the instruction.
19 Both sides and this Court took great pains to try to create a
20 charge that was an accurate statement of the law. They've
21 disagreed with some of the points that are included, we've
22 disagreed with some of the points that are included but the
23 record is what it is and we have a charge. And now to be
24 distinguishing certain aspects of it and rewriting,
25 effectively, some of it is very dangerous, and in this case I

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1 think it unfairly prejudices the defendant because it does not
2 allow for the defense and also the other provisions relating to
3 mental state.

4 Secondly, there is many other things that the jury, on
5 the third paragraph, needs to find for extortion.

6 I mean, look. Your Honor was very clear that you want
7 to create a record, as I assume as does the government that is
8 going to not be including some error and on something like this
9 which I think is a very fundamental point that I think can be
10 addressed. I think the first simple answer is that you have
11 been given instructions and that you have been -- you have
12 heard the evidence.

13 THE COURT: Mr. Molo, I am not going to do that so at
14 the same time you have made your record that that's what you
15 want me to do and I am not going do that.

16 MR. MOLO: If you are not going to do that then I
17 think you have to reread the honest services and the extortion
18 charges in their entirety with the defense's as well as with
19 the prosecution points. To single out a particular element --

20 THE COURT: And just say the same thing I said before?
21 That's the same as doing nothing, Mr. Molo.

22 MR. MOLO: Judge, what you said before is the law as
23 to those counts, has been decided in this case in the course of
24 the back and forth between the prosecution and defense. To now
25 start rewriting these instructions after they've been

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Deliberations

1 instructed, it is not consistent with what they've been
2 charged, it is not consistent with the practice of not calling
3 out specific instructions especially on a legal issue, we are
4 not talking about a procedural issue.

5 So, I would say that the simplest and the correct
6 decision that's not going to lead us down some path of, say,
7 well, what about this or what about that or we are unfairly
8 influencing something, is to reread that aspect of the charge
9 on honest services and extortion. I am talking about read the
10 whole thing in the entirety, the defense as well as the
11 prosecution point of view. That's the fair thing. And by the
12 way, it is the way that it is going to get have the record the
13 safest, I would think.

14 THE COURT: I just don't think it accomplishes
15 anything since the jury has already seen that.

16 MR. MOLO: But they haven't been deliberating very
17 long. How do we know it has or hasn't accomplished anything at
18 this stage? If we were talking about five days of deliberation
19 maybe there is a different situation there but not now, they've
20 just been charged.

21 MS. COHEN: Your Honor, I think that's covered by you
22 have to take the charge as a whole in the beginning.

23 We would also ask the third paragraph of your Honor's
24 proposed language where it says in terms of the extortion
25 count. I think that applies to both honest services fraud and

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Deliberations

1 extortion so we ask that that be removed.

2 MR. MOLO: Actually, if I could raise one more point,
3 too, that Mr. Cohen correctly points out to me.

4 This response actually requires some level of
5 interpretation of the note. It may be a correct
6 interpretation, it may be an incorrect interpretation, but it
7 is an interpretation of the note and it seems, again, at this
8 very early stage, not something that we ought to be doing.
9 They've been charged and we can reread those provisions.

10 THE COURT: Do you have an alternative reading of the
11 note?

12 MR. MOLO: I mean --

13 MR. COHEN: I do. All they're asking for is whether
14 there is a code of conduct. That's what they're asking.

15 MR. MOLO: That's true.

16 MR. COHEN: Thank you.

17 THE COURT: I don't know if there is a code of conduct
18 or not but it is irrelevant.

19 MR. COHEN: Well, then they should be told very
20 specifically and simply you have the evidence before you, you
21 have had it over three weeks. The evidence is there, they can
22 look at the evidence, and it is for them to determine whether
23 there is evidence of that. We probably conclude that there is
24 no such code of conduct but they can't be guided by that, they
25 can be guided by what evidence is before them.

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Deliberations

1 They sat and heard the evidence. There is no evidence
2 that I recall of the existence of a code of conduct but that's
3 for them to decide. Why don't we just do that at this early
4 stage? Maybe at a later stage Mr. Molo says there will be
5 reason to consider it based in light of perhaps other notes
6 that come forward. Why don't you just say you have the
7 evidence, look at it.

8 MS. COHEN: Your Honor, that ignores the first part of
9 the note which talks about exchanging New York State funds for
10 something in return is illegal, and I think your Honor's
11 proposal properly addresses the note.

12 MR. COHEN: The first part of their note is what the
13 background of the problem is. The second paragraph of the note
14 is the specific request that they're asking your Honor about.
15 And it seems to me that at this early stage just give them the
16 answer: You have the answer.

17 THE COURT: I don't think you can divorce the second
18 sentence from the first sentence.

19 MR. COHEN: Well, you are also looking at the second
20 note in light of the first note, obviously, coming from a
21 second person. I don't know if the person -- I won't say their
22 name aloud because your Honor wanted to keep that private -- I
23 don't know if that person is the foreperson or not.

24 THE COURT: I don't know either.

25 MR. COHEN: That could be just another person's view

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Deliberations

1 of this. But, it seems to me if you give the instruction that
2 I am proposing that your Honor does, I think under those
3 circumstances it may inspire another note which will flesh it
4 out in a way that your Honor doesn't have to interpret the note
5 and you will have the plain meaning of what they're saying to
6 us. But I don't think you have to do that at this stage, your
7 Honor.

8 MS. COHEN: Your Honor, I don't think the defense's
9 interpretation of the note is a reasonable one and I think the
10 jury's note requires you to give some instruction on the law
11 which is what they have to decide.

12 THE COURT: Thank you.

13 Here is what I am inclined to do. I am going to amend
14 what I gave you a little bit so that it will read as follows:

15 I am interpreting your question to be one that relates
16 either to the issue of *quid pro quo* or to the issue of what is
17 an official act. Starting with *quid pro quo*, if you were to
18 find that the defendant exchanged New York public funds for
19 something in return, that could constitute an illegal *quid pro*
20 *quo* if the other aspects of that element have been proven.
21 That answer comes not from the Assembly's code of conduct but
22 from federal law.

23 If you find that dispensing with state funds is part
24 of the responsibility of the defendant as a member of the
25 Assembly or as the Speaker, then disseminating public funds is

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Deliberations

1 an official act. But, let me also stress that you should read
2 the charge as a whole and that each element of the crime
3 charged must be proven beyond a reasonable doubt.

4 MS. COHEN: Fine with the government, your Honor.

5 MR. MOLO: Your Honor, we would object to the reading
6 of the instruction and --

7 THE COURT: Okay, I know you object to the reading of
8 the instruction. Given that I am going to do something like
9 this do you have any particular objections?

10 MR. MOLO: Well, again we object to any reading but
11 with respect to you say could constitute an illegal *quid pro*
12 *quo* and if the other aspects -- what is it that you said?

13 THE COURT: -- of that element have been proven.

14 MR. MOLO: I would say it should say like including
15 that the mental state -- no, because it is a mental state
16 issue, Judge. This willfulness and the issue of whether or
17 not -- especially in light of the evidence in this case,
18 generalized goodwill and relationship building, that's central
19 to the defense. And I think that this is calling out one
20 aspect of the charge at the expense of or to the exclusion of,
21 I should say, critical aspects of the defense.

22 THE COURT: Well, that's why the ending of the charge
23 refers them to the entire charge.

24 MR. MOLO: You know then you would say could
25 constitute illegal *quid pro quo* if other aspects including

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Deliberations

1 whether the defendant accepted these, understood the person to
2 be intending to do more than generate goodwill or relationship
3 building.

4 I mean, again, I understand your desire to do more
5 than just tell them to reread the instructions. I do go back,
6 though, to the point that Mr. Cohen made that we are so early
7 in the deliberations to be getting into this kind of colloquy I
8 think this is very, very dangerous because you don't know what
9 the next question is going to be that is going to come back.

10 I think the better approach, if you want to direct
11 them to some aspect of the charge that's clearly set forth that
12 balances things out, that's different, but we are really early
13 to be doing this.

14 THE COURT: Mr. Molo, my problem with that is this
15 question is such a basic question in terms of an issue that I
16 would not have, in a million years, have specifically included
17 this if I had thought that this might be a concern of a juror.
18 I would have said that dispensing state funds is an official
19 act that could be -- I don't know how to word it exactly but it
20 would never dawn on me that that -- kind of that core notion
21 there would be a question about.

22 MR. MOLO: I understand what you are saying but that's
23 not --

24 THE COURT: That's a question of law.

25 MR. MOLO: -- but that's not the question that is

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Deliberations

1 asked, Judge. The question is one of the jurors is having
2 difficulty discerning of whether or not exchanging New York
3 State funds for something in return is illegal. That is not a
4 question about official acts. The question is whether
5 exchanging New York State funds for something in return is
6 illegal. The legality or illegality of that depends upon the
7 mental state and the issues that are set forth in defense. It
8 is not a question of whether it is a lawful act. That's a very
9 different question.

10 And then the question: "Is there a code of conduct
11 (ethics) which clearly outlines this is the case for an
12 Assembly person?" To me, that clearly is something that is
13 responded to by saying the instructions are what the
14 instructions are. That's the law you are to follow.

15 And the first point is not about an official act. And
16 the legality or illegality turns on other legal instructions
17 and the evidence.

18 THE COURT: Okay. Anything further?

19 MS. COHEN: Not from the government.

20 THE COURT: Okay.

21 Bring out the jury, please?

22 (Continued on next page)

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Deliberations

1 (Jury present)

2 THE COURT: Okay, ladies and gentlemen. I have
3 received a note from you that has been marked as Court Exhibit
4 no. 9 and it reads:

5 "One of the jurors is having difficulty distinguishing
6 whether or not exchanging NYS funds for something in return is
7 illegal. Is there a code of conduct (ethics) which clearly
8 outlines this is the case for an Assembly person?"

9 I am interpreting your question to be one that relates
10 either to the issue of *quid pro quo* or to the issue of what is
11 an official act.

12 Starting with *quid pro quo*, if you were to find that
13 the defendant exchanged New York public funds for something in
14 return, that could constitute an illegal *quid pro quo* if the
15 other aspects of that element have been proven.

16 If you find that dispensing with state funds is part
17 of the responsibility of the defendant as a member of the
18 Assembly or as Speaker of the Assembly, then disseminating
19 public funds is an official act. But, let me also stress to
20 you that you should read the charges as a whole and that each
21 element of the crime charged must be proven beyond a reasonable
22 doubt.

23 I have also received a note from a juror regarding the
24 process of deliberation. I want to remind you that each juror
25 is entitled to his or her opinion but you are also required to

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Deliberations

1 respectfully exchange views with your fellow jurors. That's
2 the very essence of jury deliberation. If you have a point of
3 view and after discussing it with other jurors it appears that
4 your own judgment is open to question, then of course you
5 should not hesitate to yield your original point of view if you
6 are convinced that the other view is one that satisfies your
7 judgment and conscience. Do not give up a point of view that
8 you conscientiously believe simply because you are outnumbered.

9 You should vote with the others only if you are
10 convinced on the evidence, the facts, and the law that it is
11 the correct way it decide the case.

12 That said, let me remind you all that the essence of
13 deliberation is to listen to and to exchange views with your
14 fellow jurors.

15 Please continue your deliberations.

16 (Continued on next page)

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Deliberations

1 (Jury not present)

2 THE COURT: Okay.

3 MS. COHEN: Your Honor, if we could just bring to the
4 Court's attention, we are still looking at the issue, United
5 States v. Baker, 262 F.3d 124. I have a copy for the Court and
6 for defense counsel.

7 THE COURT: Thank you.

8 MR. COHEN: Thank you.

9 THE COURT: What does this tell me?

10 MS. COHEN: Your Honor, it relates to the first note.

11 THE COURT: Okay. I am comfortable and aware of this
12 line of authority. I don't think we are there. That's not
13 what I'm reading that note to say.

14 MS. COHEN: Understood, your Honor.

15 THE COURT: Okay. We will see what happens next. I
16 will see you in a bit.

17 MS. COHEN: Thank you, your Honor.

18 (Recess pending verdict)

19 (Whereupon, at 3:58 p.m. a note was received from the
20 Jury.)

21 THE COURT: Okay. We have another note. This one has
22 been marked as Court Exhibit 10. It says:

23 "Can we please receive further clarification on 5 and
24 6 (counts) regarding the interstate commerce as the law reads."

25 I think I would like to start with Mr. Molo this time.

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Deliberations

1 The government always gets to talk first.

2 What do you think they're asking?

3 MR. MOLO: Well, as to whatever they're asking I think
4 the answer is that they should reread the instruction on
5 interstate commerce.

6 THE COURT: Okay.

7 Ms. Cohen?

8 MS. COHEN: Your Honor, certainly reading your Honor's
9 instruction on interstate commerce as it appears in the charge
10 at page 25, but also you could perhaps give them further
11 guidance since it is a legal question about what does commerce
12 mean.

13 THE COURT: I was actually sort of thinking in the
14 other direction and asking them if they could please further
15 explain their question.

16 MS. COHEN: That's fine, your Honor; then we can
17 determine whether it is a factual question or a legal question.

18 MR. MOLO: Your Honor, I believe it's inappropriate to
19 engage in that kind of colloquy with the jury. Again, today is
20 the first day of deliberations so the defense would like the
21 instruction reread and -- I mean or tell -- the jury to be
22 directed that the instructions on the law are what I have given
23 you and you should reread that instruction which is, I guess,
24 at page 25.

25 THE COURT: Well, it comes up at 25 for 5 and 6,

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Deliberations

1 right?

2 MR. MOLO: Right.

3 THE COURT: Well, I can certainly direct them to that
4 portion of the charge on page 25 but it seems to me that if
5 that doesn't answer their question, they need to provide
6 greater clarification of what their question is.

7 I mean, I don't know what else to -- back when the
8 charge wasn't sent to the jury when you got questions like this
9 it was obvious what the answer was, it was to reread the charge
10 because they obviously missed it. But, when they have it back
11 there the natural inclination is to believe that whatever
12 they're troubled by isn't being answered on page 25.

13 Mr. Molo?

14 MR. MOLO: The proper course, again, I believe, is not
15 to engage in some kind of colloquy with them and ask them to
16 identify issues that we would then respond to. The law is set
17 forth in the instructions, it's --

18 THE COURT: It didn't come down from Mount Sinai,
19 right?

20 MR. MOLO: I agree.

21 THE COURT: Or wherever.

22 MR. MOLO: But it came down from this Court --

23 THE COURT: Which is close. I understand that.

24 MR. MOLO: Right next to Mount Sinai on my map. But,
25 I think that -- I don't even recall there ever being much

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Deliberations

1 dispute on this point in the instructions.

2 THE COURT: There wasn't. There was no dispute on the
3 instruction.

4 MR. MOLO: Yes.

5 THE COURT: And it was not really argued in anybody's
6 summation.

7 MR. MOLO: That's my recollection. So, that's why all
8 the more reason why it seems to me that they be instructed
9 simply to follow the law. The law has been given to them on
10 that, it is plainly stated, and I think it is a very, very
11 dangerous road to go down if we are going to start asking them
12 what is troubling you or what are the issues or to clarify your
13 question even here. I think that, at this stage, is not --
14 especially at this stage is not right.

15 THE COURT: Well, we do that all the time, Mr. Molo.
16 If you don't understand what the question is, it is not
17 uncommon to ask the jury to clarify what their question is.

18 MR. MOLO: And it is also very clear as to what the
19 law is on interstate commerce in the instructions that they
20 were given. So, I think --

21 THE COURT: Well, look. There may well be a more
22 complete charge on interstate commerce somewhere that has more
23 bells and whistles than I included. I can't say that this is
24 the only way you can charge interstate commerce.

25 MR. MOLO: I can't speak to that right now myself

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Deliberations

1 either. You may be correct. But, at least for now I don't see
2 any reason why we need to go any further than that and if they
3 have further issues with it, they can raise those with us.

4 THE COURT: Again, I don't find that to be a
5 particularly helpful way of dealing with a jury so do you have
6 any preference on whether I bring them out to tell them this or
7 whether I write it on the note?

8 MR. MOLO: I think bringing them out.

9 MS. COHEN: We were going to say the opposite, your
10 Honor.

11 THE COURT: What a surprise.

12 I am inclined not bring them out. I am inclined to
13 write it on the note.

14 Do we have a copy of the note? So, I am inclined to
15 write: The charge regarding interstate commerce is found on
16 page 25 of the instructions. If you need further
17 clarification, please be more specific.

18 MS. COHEN: That's fine with the government, your
19 Honor.

20 THE COURT: Mr. Molo? Recognizing that you don't want
21 me do this at all, do you have a better way of phrasing that
22 question?

23 MR. MOLO: No. We object and I have stated the
24 objection.

25 MR. COHEN: Could you read it again, please, your

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Deliberations

1 Honor?

2 THE COURT: Okay. It would be: The charge regarding
3 interstate commerce is found on page 25 of the instructions.
4 If you need further clarification, please be more specific.

5 Your objection is preserved, Mr. Molo.

6 MR. MOLO: I didn't respond because I objected.

7 THE COURT: If you have anything further that you
8 think can be improved from your perspective let me know that.
9 It doesn't waive your objection.

10 MR. MOLO: I understand. No.

11 THE COURT: You have no further thoughts?

12 MR. MOLO: Right.

13 THE COURT: Okay.

14 Okay, let's see what happens. Thank you.

15 MS. COHEN: Thank you, your Honor.

16 (Recess pending verdict)

17 THE COURT: Do the parties have commitments so that
18 you can't stay past noon tomorrow?

19 MS. COHEN: No, your Honor. The government is
20 prepared to stay.

21 MR. MOLO: There are -- there is some issues. I mean
22 I -- can we just talk for a minute and see?

23 THE COURT: Yes. Talk.

24 MR. MOLO: Because I take it that is what you would
25 like to do.

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Deliberations

1 THE COURT: I am going to give the jury the option.
2 I'm not sure they're going to take me up on it but I don't want
3 to give them the option if it is a real problem for the
4 parties.

5 MR. MOLO: I see. Okay.

6 (Counsel conferring)

7 (At 5:32 p.m. a note was received from the jury.)

8 THE COURT: You missed a note, Mr. Molo. I thought I
9 would tell you.

10 LAW CLERK: Do you want to read it to them first?

11 THE COURT: Yes, I guess I can.

12 The note reads, it has been marked as Court Exhibit
13 no. 11:

14 "Can I have a meeting with Judge Caproni after
15 everyone is dismissed?"

16 Signed by the same juror that sent the first note.

17 So, what is the defense position on staying past noon?
18 That's what you went out in the hallway to talk about.

19 MR. MOLO: We did.

20 THE COURT: Remember? That's okay.

21 MR. MOLO: Yeah, I remember.

22 I think if we can move some things around -- if they
23 want to stay we will move some things around and be able to do
24 that.

25 THE COURT: All right.

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Deliberations

1 What about do the parties want to be heard on the most
2 recent note?

3 MR. COHEN: One question. Is it signed by the same
4 person?

5 THE COURT: Yes. I said that. It is signed by the
6 same person who sent the first note which has been marked as
7 Court Exhibit 8.

8 MR. COHEN: I misheard you. I thought you said it
9 probably sounds like the same person.

10 THE COURT: No, it was signed by the same person.

11 MR. MOLO: Can we go back to our --

12 THE COURT: Of course.

13 MR. COHEN: Thank you.

14 (Counsel conferring)

15 MR. COHEN: Your Honor, we have a proposal, if you
16 would like to hear it.

17 THE COURT: I would love to hear it.

18 MR. COHEN: Okay.

19 We thought maybe that you table this issue with this
20 juror for this evening and see if it is still required in the
21 morning and then we could revisit it then. You are going to
22 let the jury go, I assume anyway, now. There is no harm, no
23 foul in the proposal we are making and maybe the thing becomes
24 obviated.

25 THE COURT: Well, that is in essence denying the

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Deliberations

1 request, right? So the question is what do I say.

2 MR. MOLO: I would think you could say that you have
3 the request, you understand what it is, and that in light of
4 the hour we will take the issue up in the morning. And you can
5 respond in the morning depending on what it is that we are
6 going to do.

7 MR. COHEN: He has articulated better than I have.

8 MS. COHEN: I think, your Honor, that you should, in
9 response to the note, in the robing room with counsel present,
10 talk to the juror.

11 MR. COHEN: Your Honor, we are not saying that we
12 would be opposed to that in the morning. We are just saying to
13 table it for the evening.

14 THE COURT: The idea being what is going to happen
15 between now and then?

16 MR. COHEN: Maybe the problem gets obviated in the
17 person's own mind.

18 THE COURT: Well, I suppose that's one possibility.
19 The other possibility would be to meet, in listening mode, and
20 to tell the juror that -- tell her what? I don't know.

21 MR. MOLO: I think that's the problem. I think if we
22 can take it up fresh in the morning that would be -- that would
23 be a better approach and, again, maybe the issue goes away in
24 the morning when the juror comes back and has rethought it and
25 has had the opportunity to refresh themselves at home, come

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Deliberations

1 back in the morning. And if we have to deal with it then we
2 have to deal with it then. I think the parties will have a
3 better understanding of what is and isn't possible then, too.

4 MS. COHEN: I'm not sure we would have any better
5 understanding in the morning. I think your question then
6 what -- it sort of depends what the juror says when you meet
7 with her.

8 THE COURT: Well, I assume that the juror is going to
9 tell me the same thing that's in the first note, but that's an
10 assumption.

11 MS. COHEN: Correct, your Honor. That's sort of the
12 problem.

13 THE COURT: I think I'm going to go with the defense's
14 proposal, partly because I think I want to mull this over,
15 overnight. So, I will call the jury out, I'm going to send
16 them home, I'm going to tell them when they come in in the
17 morning, first thing what they need to do is to decide if they
18 want to stay past noon and, if so, they need to send us out a
19 note immediately but they don't have to decide that this
20 evening.

21 I will say I have another note from one of the jury
22 members asking for a meeting and I am telling her what? That I
23 will --

24 MR. MOLO: In light of the hour, I think.

25 THE COURT: In light of the hour I will take that up

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Deliberations

1 tomorrow morning if she still wants a meeting in the morning.

2 MS. COHEN: Correct, your Honor.

3 MR. COHEN: It may be that the jury does not know
4 about this new note and you are going to communicate to them.

5 THE COURT: I'm sure they do. She has it handed it to
6 the marshal. How are they not going to know?

7 They may not know the content of it, is that your
8 concern?

9 MR. COHEN: Pardon me? Yes, the content. I think
10 that was your concern this morning with the earliest note.

11 THE COURT: Well, the early one, though, had a lot of
12 information. This just asked for a meeting. I mean I don't
13 know --

14 MR. MOLO: I suppose you could say that you received a
15 note and you don't have to say asking for a meeting. And you
16 say you received a note and in light of the hour you will
17 address the issue in the morning so there is no mention of a
18 meeting to the full jury.

19 MS. COHEN: The issue sort of reveals that there is an
20 issue.

21 MR. COHEN: I'm sorry, Ms. Cohen. I can't hear you.

22 MS. COHEN: I think if you just said I received a note
23 we will take up in the morning and not say an issue because
24 that sort of reveals that there is some issue.

25 MR. MOLO: That's fine too: A note from one of the

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Deliberations

1 jurors, and in light of the hour we will take it up in the
2 morning.

3 THE COURT: Okay.

4 Bring out the jury.

5 (Continued on next page)

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Deliberations

1 (Jury present)

2 THE COURT: Ladies and gentlemen, I'm about to send
3 you home for the evening. I have an assignment for you for
4 first thing in the morning. I had told you and promised you
5 that I would let you go at noon. If you want to work longer
6 than noon, I need you to send me out a note first thing in the
7 morning, one way or the other, indicating whether you want to
8 remain longer than noon. We can stay if you want but I'm
9 leaving it totally up to you whether you want to say or not
10 stay. Okay?

11 Also, I received a note from a juror. In light of the
12 hour, I will take up that note in the morning, not this
13 evening.

14 So, with that, let me remind you again don't discuss
15 the case with anybody. Don't read any news accounts about this
16 case or any other corruption case that's going on. Don't
17 listen to any news about it, on the radio or the TV.

18 Have a very good evening. And when you come in
19 tomorrow you don't haven't to come into the courtroom but don't
20 start deliberating until all 12 of you are together. Before
21 all 12 of you are there you are just a group of people having
22 coffee together. Okay? Once 12 of you get there, then you are
23 a jury and then you can start deliberations. Your first
24 assignment is to tell me whether you want to stay past noon
25 tomorrow. Okay?

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Deliberations

With that, have a very good evening.

(Continued on next page)

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Deliberations

1 (Jury not present)

2 THE COURT: Okay. Anything before we leave?

3 MR. MOLO: No, your Honor. Nothing from the
4 defendant.

5 MS. COHEN: Just as a precaution, your Honor? I know
6 that you are going to call the alternates at the end of every
7 day, if you can perhaps ask them to call in the morning
8 tomorrow?

9 THE COURT: They've already called today. We have
10 numbers that we can reach them at.

11 MS. COHEN: Fine. Thank you, your Honor.

12 THE COURT: You're welcome.

13 (Adjourned to 9:30 a.m., November 25, 2015.)
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